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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

[redacted]

File: [redacted] Office: CALIFORNIA SERVICE CENTER Date: FEB 25 2011

IN RE: Petitioner: [redacted]
Beneficiary:

Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

IN BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the petition for a nonimmigrant visa. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner is an Illinois corporation that previously filed a petition on behalf of the beneficiary in order to open a new office in the United States. The petitioner has now filed this nonimmigrant visa petition seeking to continue the employment of its vice president for an additional three years as an L-1A nonimmigrant intracompany transferee pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L).

The director denied the petition concluding that: 1) the petitioner failed to establish that the beneficiary would be employed in the United States in a primarily managerial or executive capacity; and 2) the petitioner provided inconsistent evidence with regard to its ownership and thus failed to establish that it has a qualifying relationship with the beneficiary's foreign employer.

On appeal, counsel for the petitioner asserts that the director erred in his conclusions and submits a brief along with additional documentation in an effort to overcome the adverse decision.

To establish eligibility for the L-1 nonimmigrant visa classification, the petitioner must meet the criteria outlined in section 101(a)(15)(L) of the Act. Specifically, a qualifying organization must have employed the beneficiary in a qualifying managerial or executive capacity, or in a specialized knowledge capacity, for one continuous year within three years preceding the beneficiary's application for admission into the United States. In addition, the beneficiary must seek to enter the United States temporarily to continue rendering his or her services to the same employer or a subsidiary or affiliate thereof in a managerial, executive, or specialized knowledge capacity.

The regulation at 8 C.F.R. § 214.2(l)(3) states that an individual petition filed on Form I-129 shall be accompanied by:

(i) Evidence that the petitioner and the organization which employed or will employ the alien are qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section.

(ii) Evidence that the alien will be employed in an executive, managerial, or specialized knowledge capacity, including a detailed description of the services to be performed.

(iii) Evidence that the alien has at least one continuous year of full-time employment abroad with a qualifying organization within the three years preceding the filing of the petition.

(iv) Evidence that the alien's prior year of employment abroad was in a position that was managerial, executive or involved specialized knowledge and that the alien's prior education, training, and employment qualifies him/her to perform the intended services in the United States; however, the work in the United States need not be the same work which the alien performed abroad.

The first issue in the present matter is whether the petitioner established that the beneficiary would be employed by the United States entity in a primarily managerial or executive capacity.

Section 101(a)(44)(A) of the Act, 8 U.S.C. § 1101(a)(44)(A), defines the term "managerial capacity" as an assignment within an organization in which the employee primarily:

(i) manages the organization, or a department, subdivision, function, or component of the organization;

(ii) supervises and controls the work of other supervisory, professional, or managerial employees, or manages an essential function within the organization, or a department or subdivision of the organization;

(iii) if another employee or other employees are directly supervised, has the authority to hire and fire or recommend those as well as other personnel actions (such as promotion and leave authorization), or if no other employee is directly supervised, functions at a senior level within the organizational hierarchy or with respect to the function managed; and

(iv) exercises discretion over the day-to-day operations of the activity or function for which the employee has authority. A first-line supervisor is not considered to be acting in a managerial capacity merely by virtue of the supervisor's supervisory duties unless the employees supervised are professional.

Section 101(a)(44)(B) of the Act, 8 U.S.C. § 1101(a)(44)(B), defines the term "executive capacity" as an assignment within an organization in which the employee primarily:

(i) directs the management of the organization or a major component or function of the organization;

(ii) establishes the goals and policies of the organization, component, or function;

(iii) exercises wide latitude in discretionary decision-making; and

(iv) receives only general supervision or direction from higher level executives, the board of directors, or stockholders of the organization.

In support of the Form I-129, the petitioner submitted a letter dated June 21, 2010 from the foreign entity's general manager, who stated that at the time of filing, the beneficiary was supported by a team of four managers and four support employees. [redacted] stated that the beneficiary's support staff includes a merchandising manager and a logistics manager, both located in the United States, and a finance manager, who is located in China and whose salary is claimed to be "charged back" to the U.S. petitioner. [redacted] stated that other members of the support staff include an office manager who also performs the duties of an operations coordinator, a full-time operations coordinator, a sales manager, and a sales associate. The sales

manager and sales associate are both located in China and are claimed to have their salaries "charged back" to the petitioning entity. The petitioner also provided the beneficiary's proposed job description and percentage breakdown, which has been included in the director's decision and therefore need not be repeated in this decision.

The initial supporting evidence also includes the petitioner's organizational chart, which shows the president of the company at the top of the hierarchy followed by the beneficiary in the position of vice president. The chart shows that the beneficiary oversees four managerial positions including a merchandising, logistics, finance, and office managers. The remainder of the chart depicts a sales manager and a sales associate overseen by the merchandising manager and two operations coordinators overseen by the logistics manager. The chart indicates that the company's president, finance manager, sales manager, and sales associate are all working from China.

On July 9, 2010, the director issued a request for evidence (RFE) instructing the petitioner to submit a more detailed description of the beneficiary's proposed day-to-day duties and the percentage of time the beneficiary would allocate to each task on the list.

In response, the petitioner provided a letter dated August 16, 2010 from counsel who stated that the beneficiary manages all of the petitioning entity's operational functions, which include purchasing, logistics, and sales, and the administrative functions, which include personnel, administration, and finances. Counsel stated that the beneficiary directs and controls the work of the logistics manager, the merchandising manager, and finance manager. Counsel discussed the beneficiary's contributions in terms of furthering the company's business objectives. Additionally, the petitioner resubmitted the percentage breakdown and list of responsibilities that were provided initially in support of the petition. The petitioner did not, however, provide any more detailed information about the beneficiary's specific job duties.

The petitioner also provided the foreign entity's internal audit showing the foreign entity's salary expenses for employees of the U.S. entity and the petitioner's second quarterly income statement for April 1, 2010 through June 30, 2010, which showed payroll expenses for the three-month time period totaling $40,670.21.

In a decision dated September 1, 2010 the director denied the petition, finding that a number of the items listed in the beneficiary's job description were not indicative of a manager or executive. The director also focused on the petitioner's organizational hierarchy, noting that four of the employees listed in the organizational chart were not included in the petitioner's payroll records for the 2010 second quarter, thus giving cause to question the reliability of the petitioner's organizational chart and its overall ability to relieve the beneficiary from having to primarily perform non-qualifying tasks given its staffing at the time of filing. The director further noted that any employees who work at the foreign entity cannot be deemed employees of the U.S. entity.

On appeal, counsel asserts that the director's findings are erroneous and that the director's refusal to acknowledge the foreign-based employees as employees of the petitioner is unlawful in light of the chargeback audits that were submitted in support of the petitioner's RFE response. Counsel further asserts that even if the beneficiary were to perform certain non-qualifying job duties including those specifically determined by the director to be non-managerial, such job duties would not consume the primary portion of

the beneficiary's time and thus would not preclude approval of the instant petition.

Upon review of the instant record, however, the AAO finds that the documentation presented does not support a withdrawal of the director's decision.

When examining the executive or managerial capacity of the beneficiary, the AAO will look first to the petitioner's description of the job duties. *See* 8 C.F.R. § 214.2(l)(3)(ii). The AAO will then consider this information in light of the petitioner's organizational hierarchy, the beneficiary's position therein, and the petitioner's overall ability to relieve the beneficiary from having to primarily perform the daily operational tasks. Here, with regard to the first factor—the petitioner's description of the beneficiary's proposed employment—the AAO finds that the job description consists primarily of generalized statements rather than specific tasks and as such fails to establish the amount of time the beneficiary would allocate to individual job duties. For instance, the petitioner previously indicated that 32.5% of the beneficiary's time would be allocated to managing "all functions, personnel and activities" that involve buying and selling agricultural commodities. The petitioner stated that this responsibility would include meeting with the merchandising manager multiple times on a daily basis to oversee the pricing and negotiation of the purchasing and sales activities. However, other than stating that the beneficiary would meet with the individual that would be in charge of the purchasing and sales activities, the petitioner did not clarify the beneficiary's actual role in the merchandising activities. In other words, what does the beneficiary do beyond meeting with the person who handles the purchase and sale of agricultural commodities? Additionally, although the petitioner indicated that the beneficiary would oversee the activities of the sales manager who is based in China, there is insufficient information to clarify how the beneficiary oversees the work of an employee who is based thousands of miles away from the U.S. entity and, more importantly, why the beneficiary directly oversees the work of an employee who depicted as the merchandising manager's subordinate. The petitioner did not indicate precisely how much time the beneficiary would spend overseeing the sales manager in China, and it is unclear what portion of the beneficiary's time would be spent managing the merchandising manager who is claimed to be employed in the U.S. office.

Additionally, the AAO finds that the documentation regarding the petitioner's organizational structure is inconclusive and does not support the hierarchy that was depicted in the submitted organizational chart. While the AAO acknowledges the petitioner's submission of the foreign entity's internal audit, which shows salaries for the petitioner's foreign-based employees, the record does not establish that the petitioner actually paid those salaries as claimed. In making this determination, the AAO converted into U.S. currency the salaries indicated for each employee in 2009, including the amount the petitioner was supposed to cover in employee salaries, bonuses, and traveling expenses. In total, after considering the note on the final page of the audit, which stated that the petitioner would cover 80% of the expenses of [redacted], the sales associate, and 100% of the salaries and expenses for the sales and finance managers, it appears that the petitioner was supposed to pay approximately $43,800 for the services rendered by its foreign-based employees. This sum is in addition to the $74,000, which is the total amount of the IRS Form W-2s that the petitioner issued to three employees in 2009. In total, the petitioner's 2009 payroll expenses as claimed in the W-2s and the foreign entity's internal audit statements totaled approximately $117,800. However, when reviewing the petitioner's 2009 tax returns, both the original and the amended Form 1120X, the petitioner showed that it paid only $60,182. Thus, even if the AAO were to consider only the W-2 statements that were issued in 2009, the figure indicated in the petitioner's tax returns is not consistent with the total of the three W-2 statements. It is

incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Furthermore, doubt cast on any aspect of the petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Id.* at 591. Therefore, while the AAO acknowledges that the inconsistencies pointed out concern documentation regarding salaries and wages paid in 2009 rather than 2010 when the petition was filed, the very existence of the anomalies undermines the credibility of the petitioner's claim, thus causing the AAO to question whom the petitioner actually employed at the time of filing and whether the petitioner's staffing composition at that time was adequate to relieve the beneficiary from having to primarily perform non-qualifying job duties.

In light of the discrepancies between the foreign entity's internal salary audits and the petitioner's 2009 tax return and Form W-2s, the AAO finds that the evidentiary value of the internal audits is limited at best. Thus, the AAO will focus its attention on the petitioner's 2010 second quarterly wage report, which indicates that the petitioner paid wages to five employees at the time the Form I-129 was filed. Based on the information provided in the petitioner's organizational chart, it appears that the petitioner paid wages to the beneficiary, the merchandising manager, the logistics manager, one operations manager, and one operations coordinator/office manager. Although the chart also identifies a president, a sales manager, a sales associate, and a finance manager, none of the individuals named in those positions were identified in the petitioner's 2010 second quarterly wage report, nor has any credible documentation been provided to establish that the petitioner paid salaries or wages to any of these individuals. *See id.* This lack of adequate documentation gives rise to doubt as to the beneficiary's personnel management duties, as only one of his direct subordinates, i.e., the logistics manager, can actually be deemed a managerial employee. Without adequate proof that the merchandising manager actually has subordinate employees, the AAO cannot rely on position title to determine that the merchandising manager is a managerial or supervisory employee. Additionally, without adequate supporting documentation, the AAO also cannot conclude that either the office manager or the merchandising manager is a professional employee.

Accordingly, not only does the record lack evidence to establish that the beneficiary would oversee the work of managerial, supervisory, or professional employees, but the AAO must also question whether the five employees the petitioner had in place at the time of filing were sufficient to enable the beneficiary to allocate the primary portion of his time to performing tasks within a qualifying managerial or executive capacity. While the AAO acknowledges that no beneficiary is required to allocate 100% of his time to managerial- or executive-level tasks, the petitioner must establish that the non-qualifying tasks the beneficiary would perform are only incidental to his/her proposed position. An employee who "primarily" performs the tasks necessary to produce a product or to provide services is not considered to be "primarily" employed in a managerial or executive capacity. *See* sections 101(a)(44)(A) and (B) of the Act (requiring that one "primarily" perform the enumerated managerial or executive duties); *see also Matter of Church Scientology International*, 19 I&N Dec. 593, 604 (Comm. 1988). The AAO further notes that, while a detailed job description is admittedly one of the key factors that help to determine whether a proffered position is within a managerial or executive capacity, merely providing a job description that describes a set of primarily qualifying tasks is meaningless if the organization that seeks to hire the beneficiary does not have the human resources to relieve the beneficiary from having to primarily perform non-qualifying operational job duties.

In the present matter, the petitioner has neither provided a detailed job description specifically listing the beneficiary's day-to-day tasks, nor has the petitioner provided sufficient evidence to establish that the staffing structure that was in place at the time of filing the petition was adequate to support the beneficiary in a primarily managerial or executive capacity. Therefore, in light of these considerable deficiencies, the AAO cannot approve the instant petition.

The other issue in this proceeding is whether the petitioner has submitted sufficient and credible documentation to establish that it has a qualifying relationship with the beneficiary's foreign employer. To establish a "qualifying relationship" under the Act and the regulations, the petitioner must show that the beneficiary's foreign employer and the proposed U.S. employer are the same employer (i.e. a U.S. entity with a foreign branch office) or related as a "parent and subsidiary" or as "affiliates." *See generally* § 101(a)(15)(L) of the Act, 8 U.S.C. § 1101(a)(15)(L).

The regulations at 8 C.F.R. § 214.2(l)(1)(ii)(G) state:

> *Qualifying organization* means a United States or foreign firm, corporation, or other legal entity which:
>
> (1) Meets exactly one of the qualifying relationships specified in the definitions of a parent, branch, affiliate or subsidiary specified in paragraph (l)(1)(ii) of this section;
>
> (2) Is or will be doing business (engaging in international trade is not required) as an employer in the United States and in at least one other country directly or through a parent, branch, affiliate, or subsidiary for the duration of the alien's stay in the United States as an intracompany transferee; and
>
> (3) Otherwise meets the requirements of section 101(a)(15)(L) of the Act.

The regulations at 8 C.F.R. § 214.2(l)(1)(ii)(I) state:

> *Parent* means a firm, corporation, or other legal entity which has subsidiaries.

The regulations at 8 C.F.R. § 214.2(l)(1)(ii)(J) state:

> *Branch* means an operation division or office of the same organization housed in a different location.

The regulations at 8 C.F.R. § 214.2(l)(1)(ii)(K) state:

> *Subsidiary* means a firm, corporation, or other legal entity of which a parent owns, directly or indirectly, more than half of the entity and controls the entity; or owns, directly or indirectly, half of the entity and controls the entity; or owns, directly or indirectly, 50 percent of a 50-50

joint venture and has equal control and veto power over the entity; or owns, directly or indirectly, less than half of the entity, but in fact controls the entity.

The regulations at 8 C.F.R. § 214.2(l)(1)(ii)(L) state, in pertinent part:

Affiliate means (1) One of two subsidiaries both of which are owned and controlled by the same parent or individual, or

(2) One of two legal entities owned and controlled by the same group of individuals, each individual owning and controlling approximately the same share or proportion of each entity.

In support of the Form I-129, [redacted], the individual who is named president of the U.S. petitioner, provided a letter dated June 21, 2010 on the petitioner's behalf claiming that the U.S. entity was fully capitalized by the beneficiary's foreign employer, thus indicating that the latter is the parent entity in a parent-subsidiary relationship. In support of this claim, the petitioner submitted the following documents:

1. An undated stock certificate (No. 1) showing the foreign entity as owner of 10,000 shares of the petitioner's stock.

2. A photocopied information sheet showing that the stock transfer shown in certificate No. 1 took place on July 25, 2008.

3. A photocopy of the foreign entity's corporate resolution [redacted] of [the petitioner] by [redacted] dated June 10, 2008 identifying the three individuals that were selected to act as the directors of the petitioning entity.

4. A photocopy of the foreign entity's corporate resolution titled [redacted] [the petitioner] by [redacted]" dated June 10, 2008 instructing the petitioner's corporate secretary to include the petitioner's "Certificate of Incorporation filed with the Secretary of State of the State of Illinois on July 11, 2010" into the petitioner's minute book. Another resolution that is part of the same document indicated that the petitioner resolved to sell 10,000 shares of its stock to Xiamen C&D, Inc. in exchange for $100,000, which would constitute all of the petitioner's issued and outstanding stock.

5. A foreign document accompanied by an English translation of the foreign entity's application for an overseas fund transfers, dated September 26, 2008, indicating that the foreign entity intended to transfer $100,000 as investment capital for a foreign enterprise. The petitioner is identified as the beneficiary of the fund transfer.

6. A photocopy of the first page of the petitioner's bank account summary for September 2008 showing that $99,985 was deposited into the petitioner's account sometime in September. The specific date and description of the transfer appear to have been redacted and in place of this information the foreign entity's name has been handwritten in a blank space adjacent to

the specific details of the transaction.

7. A foreign document accompanied by an English translation of the foreign government's approval of the foreign entity's application for an overseas fund transfer. The document is dated September 2, 2008, and shows that the fund transfer is scheduled to take place on September 26, 2008.

8. The petitioner's lease dated September 5, 2008 showing the lease term as September 19, 2008 through September 18, 2009.

9. The petitioner's 2009 federal income tax return, including Schedule L, which shows at item 22(b) that the petitioner started the year with $100,000 in capital stock and ended the year with $112,976 in capital stock.

After reviewing the petitioner's initial submissions, the director determined that additional evidence was required to establish that the beneficiary's foreign and U.S. employers have a qualifying relationship. The director addressed various deficiencies in the July 9, 2010 RFE, pointing out that while the petitioner's prior submissions included a copy of the overseas wire transfer, the submitted documents were illegible and thus failed to determine the identity of the sender and the amount of funds transferred. Accordingly, the petitioner was asked to provide proof of the foreign entity's stock purchase, including bank certified copies of the original wire transfers from the parent company, and copies of canceled checks and/or deposit slips showing the monetary amounts received in exchange for the sale of stock. The petitioner was also instructed to provide copies of the foreign entity's bank statement and the corresponding bank statement for the U.S. entity showing the fund transfer. The director also pointed out that the petitioner's account summary, which was listed at No. 6 above, was altered and therefore instructed the petitioner to provide the original, unaltered bank statement.

In response, the petitioner provided the following documents:

1. The petitioner's certificate of incorporation showing that the petitioner was incorporated on July 11, 2008.

2. The petitioner's articles of incorporation filed on July 11, 2008 showing that the petitioner received a total of $100,000 in exchange for 10,000 of issued stock.

3. Copies of the documents described in Nos. 1-4 of the petitioner's original submissions.

4. The foreign entity's account summary showing that $100,000 was debited from the foreign entity's bank account ending in 6014 on September 26, 2008.

5. The requested original account summary showing the petitioner's receipt of $99,985 on September 26, 2008 via incoming wire transfer.

Despite the various documents that the petitioner submitted in response to the RFE, the director determined

that the petitioner failed to establish that it has a qualifying relationship with the beneficiary's foreign employer and therefore concluded that the petitioner was ineligible for the immigration benefit sought herein. The director's discussion focused on Schedule L, item 22(b) of the petitioner's 2009 federal tax return, which showed that the petitioner received additional funds in excess of $12,000 in exchange for issuance of stock. The director determined that the evidence submitted by the petitioner thus far did not account for an additional issuance of stock, as no additional stock certificates were submitted. The director further noted that this lack of documentation and apparent inconsistency gave rise to questions as to the ownership of the U.S. petitioner.

On appeal, the petitioner addresses the director's conclusion through counsel who states that the additional funds shown in Schedule L of the petitioner's 2009 tax return were the result of an accountant's error. Counsel explains that the extra funds were supposed to be claimed as additional paid-in capital, which is shown at Schedule L, item 23 of the tax return. Counsel further points out that even if, *arguendo*, the petitioner were to have issued additional stock to another party in the amount claimed in the tax return, the foreign entity that was originally claimed as the petitioner's sole owner would nevertheless remain as the petitioner's parent entity in that it would own the majority of the petitioner's issued stock.

While counsel's argument is theoretically correct, the AAO must point out that the discrepancy, in and of itself, would be a sufficient basis for questioning the credibility of the petitioner's claim. As noted previously in the director's decision, whenever the petitioner submits evidence that causes U.S. Citizenship and Immigration Services (USCIS) to doubt any aspect of the petitioner's proof, such doubt may result in a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. at 591. Here, the director was clearly justified in pointing out that the information that was provided in Schedule L of the petitioner's 2009 tax return was not consistent with the petitioner's original claim, i.e., that the foreign entity was the petitioner's parent entity by virtue of being the sole owner of all 10,000 authorized shares of stock.

On appeal, the petitioner provides a letter dated September 21, 2010 from [redacted], the certified account who claimed that he/she was responsible for the error made in the petitioner's 2009 tax return. The accountant explained the nature of the error and provided the petitioner's amended tax return for that year in an effort to correct that error. The AAO notes, however, that the amended tax return that has been submitted on appeal to cure a deficiency is itself deficient, as it was neither a certified copy nor was it signed by an officer of the petitioning entity, thus causing the AAO to question whether the amended tax return was in fact filed with the Internal Revenue Service and whether the information contained therein was accurate and reliable. As noted previously, the petitioner must resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Id*. at 591-92.

Additionally, in conducting its own independent review of the petitioner's submissions, the AAO finds that the record contains additional anomalies that give USCIS further cause to question the petitioner's credibility. Specifically, the AAO points out that while the petitioner provided evidence to show that the foreign entity, which has been claimed as the parent in its parent-subsidiary relationship with the petitioner, did not transfer funds to the petitioner's bank account until over two months after the U.S. petitioner purportedly issued stock to the foreign entity. Thus, it is clear that the fund transfer and the issuance of stock were not

contemporaneous and that in fact, the foreign entity claims to have received stock for which it did not pay compensation at the time of issuance. The order of these transactions and the fact that the two events—the issuance of stock and the payment of consideration—were not contemporaneous makes it impossible to confirm that the $100,000 fund transfer by the foreign entity into the petitioner's account was actually intended as consideration for the issuance of stock. Moreover, the fact that the petitioner claimed in the articles of incorporation that it had already received consideration in the amount of $100,000 further undermines the claim that the fund transfer that took place in late September 2008 was intended as consideration for stock that was issued in July of the same year.

Next, the AAO points to considerable anomalies in the written consent documents that were described in Nos. 3 and 4 of the original submissions. First, the AAO notes that the written consent of the sole shareholder establishes the foreign entity as the sole shareholder of an entity that did not come into existence until July 11, 2008, which is one month after the date that appears on the consent document. It is factually impossible and legally erroneous for the foreign entity to declare itself as the sole shareholder of an entity that did not exist at the time of the declaration. The document in No. 4 of the original submissions is plagued with a similar legal and factual impossibility in that it purports to represent the actions of the petitioner's directors effective as of June 10, 2008, which, as with the prior consent document, is one month prior to the date that the petitioner's corporate existence came into being.

In summary, the evidence of record is insufficient in light of the anomalies and inconsistencies that were pointed out in the above discussion. The AAO cannot focus primarily on the petitioner's claims while ignoring the documentation that gives the AAO ample reason to doubt those claims. It is noted that going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). In the present matter, the reliability of a number of the petitioner's supporting documents is severely undermined as a result of the factual and legal inconsistencies created by the contents of these documents. As there is no evidence in the record that effectively explains the reason(s) for or resolves these considerable discrepancies, the AAO concludes that the petitioner has failed to provide probative and credible evidence to establish that the petitioner is solely owned by the beneficiary's foreign employer as claimed. Therefore, the petitioner has failed to establish that it has the qualifying relationship that is necessary to meet eligibility requirements and for this additional reason, the instant petition cannot be approved.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act. Here, that burden has not been met. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.